

MEMORANDUM OF UNDERSTANDING

Between

**THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT**

AND THE UNITED STATES SMALL BUSINESS ADMINISTRATION

For

**IMPROVING SMALL BUSINESS UTILIZATION IN HUD-FUNDED CONSTRUCTION
AND
OPPORTUNITIES FOR BUSINESSES LOCATED IN LOW- & MODERATE-INCOME
COMMUNITIES**

I. PURPOSE

This Memorandum of Understanding (MOU) establishes an agreement between the United States Department of Housing and Urban Development (HUD) and the United States Small Business Administration (SBA) (individually a party or collectively the parties) to jointly create an initiative supporting small business development by increasing small business participation in HUD-funded construction projects. Additionally this MOU memorializes the current collaboration between the two agencies to create a new HUBZone mapping tool prototype based on HUD's EZ Locator tool.

SBA enters into this agreement under the authority of sections 4(h) and 8(b)(1)(A) of the Small Business Act (15 U.S.C. §§ 634(h) and 637(b)(1)(A)) which, in part, enables the Agency to partner with Federal and non-Federal entities to provide resources for small businesses.

II. BACKGROUND AND SCOPE

A. Scope

SBA and HUD individually offer programs designed to support local economic development. HUD-funded construction projects offer opportunities for small businesses once they have the training and financing required to compete for and complete these projects. SBA offers a surety bond guarantee program which helps support small businesses competing for these federal construction projects. The goal of this initiative is to coordinate marketing and program resources to provide more opportunities for small businesses to learn about HUD-funded construction opportunities and the SBA surety bond and counseling/training resources which can help them develop the capacity to compete for these contracts.

This initiative is divided into two phases. The first phase will focus on SBA educating HUD staff and grantees on its surety bond program and discussion as to whether to offer additional training to the surety bond industry. The second phase will focus on the development of a standardized training curriculum to educate small businesses on the SBA tools available to help them qualify to bid on HUD and other federally-funded construction opportunities.

B. HUD's Programs for small construction companies

HUD seeks to increase the economic development benefits, including small and minority business utilization, of investments that it makes in communities nationwide, through its Community Development Block Grant, HOME Investment Partnership, homeless, public housing and multifamily programs. Within the small business utilization goal, HUD seeks to increase opportunities for low-income residents of the communities and developments in which it invests, by increasing the participation of companies that are either owned by or employ such residents, as further defined under Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 135] and applicable regulations (Section 3 businesses).

HUD-funded construction projects represent substantial business for small construction contractors. In particular, the variety of project sizes funded in a community by HUD -- from single family rehabilitation, to smaller-scale residential or commercial buildings, to large commercial and mixed use facilities and residential projects involving hundreds of units -- can constitute a ladder of opportunities to grow construction companies.

C. SBA's Surety Bond Guarantee Program

The SBA's Surety Bond Guarantee Program has been operational since April 1971. It is designed to increase small business' access to federal, state, and local government contracting, as well as private sector contracting, by guaranteeing "bid, performance, and payment bonds for individual contracts of \$2 million or less for small contractors who cannot obtain surety bonds through regular commercial channels."

A surety bond is a three-party instrument between a surety (someone who agrees to be responsible for the debt or obligation of another), a contractor, and a project owner. If the contractor is unable to successfully perform the contract, the surety assumes the contractor's responsibilities and ensures that the project is completed. The surety bond reduces the risk of contracting, as the performance portion of any surety bond serves to protect the taxpayer, and the payment portion of the bond protects subcontractors in need of payment.

Surety bonds are viewed as a means to encourage project owners to contract with small businesses which may not have the credit history or prior experience of larger businesses and are considered to be at greater risk of failing to comply with the contract's terms and conditions.

Three general types of surety bonds are:

1. Bid bonds guarantee that the bidder on a contract will enter into the contract and furnish the required payment and performance bonds if awarded the contract;

2. Payment bonds guarantee that suppliers and subcontractors will be paid for work performed under the contract; and
3. Performance bonds guarantee that the contractor will perform the contract in accordance with its terms and conditions.

Surety bonds are important to small businesses interested in competing for a federal contract because the Federal Government requires prime contractors, prior to the award of a federal contract exceeding \$150,000 for the construction, alteration or repair of any building or public work of the United States, to furnish a performance bond issued by a surety satisfactory to the officer awarding the contract, and in an amount the contracting officer considers adequate, to protect the Government. Prime contractors are also required to post a payment bond with a surety satisfactory to the contracting officer for the protection of all persons supplying labor and material in carrying out the work provided for in the contract. Both bonds become legally binding upon award of the contract and their "penal amounts," or the maximum amount of the surety's obligation, must generally be 100% of the original contract price. Most state and local governments have adopted similar legislation, often called "Little Miller Acts," referencing the Miller Act of 1935 which established the federal requirement. Many private project owners also require contractors to furnish a surety bond before awarding them a contract.

D. HUBZone Mapping Tool

SBA and HUD have been discussing ways to further develop SBA's HUBZone mapping capabilities to create a new platform similar to HUD's EZ Locator. A HUBZone Locator prototype using select HUBZone data was created during FY 12. Both HUD and SBA realize that further discussion and development may be necessary in FY 13 to incorporate all HUBZone designations and interface with SBA's OneTrack Customer Management System. Future activities and any need for additional resources will be documented in a separate Interagency Agreement.

III. AGENCY ROLES AND RESPONSIBILITIES

A. Phase 1: Information Sharing

1. Generally: HUD and SBA will work together to inform each agency's staff, grantees and industry networks about the opportunities, services and products offered by the other. This information sharing will primarily take the form of webinars, for which roles and responsibilities are described below. The agencies acknowledge that the initial phase of this activity, outreach and information for HUD staff and grantees about surety bonds will be completed in September, 2012.
2. HUD: HUD's Office of Economic Development will coordinate webinar logistics, market the webinars to HUD staff and grantees, and disseminate information about both surety bonds in general, and the ways in which SBA's guarantee allows earlier-stage construction companies to access the surety market. Primary modes of information sharing include:
 - a. Scheduling webinars, communications and follow-up surveys for staff, grantees and small businesses referred by these entities. Webinars will include both a general presentation on surety bonds and the SBA bond guarantee, and a more detailed presentation on the surety underwriting process and factors considered for individual small businesses.
 - b. Posting of visual and audio webinar presentations, including written answers to frequently asked questions, on HUD Community Planning and Development websites for future reference by staff, grantees and interested members of the public.
3. SBA: SBA's Office of Surety Guarantees will:
 - a. Conduct webinars for HUD staff and grantees
 - b. Invite surety companies and agents to participate in training and webinars as guest speakers.
 - c. Work with HUD to outline presentation content and identify, schedule and prepare presenters.
 - d. Disseminate information from webinars as appropriate through its communications channels, including blogs.
 - e. The agencies will consider whether additional webinar or content will be necessary for outreach and information to the surety industry regarding the opportunities represented by HUD funded construction, including relevant requirements, processes and decision making bodies. To the extent this is considered desirable:

- i. HUD's Office of Economic Development will work with SBA's Office of Surety Guarantees to outline useful presentations, identify, schedule and prepare presenters and develop presentation and follow-up materials.
- ii. Subject to the availability of funds, SBA will cover the costs of these additional webinars and provide logistical support.

B. Phase 2: Support for local stakeholders:

- 1. Generally: HUD and SBA will coordinate to provide training materials and curricula to the SBA's Small Business Development Centers (SBDCs), Service Core of Retired Executives Chapters (SCORE), Veteran's Business Outreach Centers (VBOCs) and Women's Business Centers (WBCs), in places where local stakeholders – such as cities, housing authorities, transit agencies, property owners and larger construction companies come together to offer opportunities in a coordinated way.

To better align small businesses interested in competing for federally-funded construction projects with training and technical assistance, the agencies will fulfill the responsibilities listed below. At this time, the agencies envision training and technical assistance activities at the local level to take a form similar to the forums and training sessions outlined in Exhibit A. Convening, training and technical assistance activities may be revised through additional curriculum development work and as a result of feedback from local stakeholders, SCORE Chapters, WBCs, VBOCs and SBDCs as the initiative progresses.

Since program success is predicated on interest from local stakeholders, SCORE Chapters, WBCs, VBOCs and SBDC's participating in the initiative and limited resources, HUD and SBA expect that this work will initially take place in a limited number of communities. Both HUD and SBA recognize that certain activities may require separate MOUs or co-sponsorship agreements to be developed with third parties, as outlined in section VI.

2. HUD:

- a. The Office of Economic Development will play the lead role for HUD, and serve as single point of contact for communications and coordination among national partners and for local stakeholders. OED will:
 - i. Organize outreach and engagement with local stakeholder groups.
 - ii. Manage communications, identify and resolve questions among national partners and local stakeholders, including HUD grantees.
 - iii. Consolidate progress tracking reported by local stakeholder groups, assess progress and issues.
 - iv. Collect feedback from cities, housing authorities, property owners and construction companies.

- v. To the extent necessary and contributing to the Construction Management element planned for HUD's Core Curriculum, request technical assistance funding to develop elements of curricula and toolkits focused on HUD requirements and construction funding characteristics.
 - vi. Work with national partners to identify and pursue additional ways to support small business utilization.
 - vii. Work with HUD funded community development corporations, as well as organizations receiving allocations of Low Income Housing Tax Credits to connect them with SBA's Office of Capital Access' Community Advantage program as a potential source of working capital for their contractors and suppliers that may not qualify for regular SBA loans or conventional bank financing.
 - viii. Assist SBA and the other partners in this initiative in understanding the program structure, processes, and requirements regarding HUD-funded construction, and developing additional financial and technical assistance products and services as appropriate.
- b. The Office of Policy Development and Research, Office for International and Philanthropic Innovation will identify, facilitate outreach and advise on communications to interested philanthropy and social investors.

3. SBA:

- a. The Office of Surety Guarantees (OSG) will play the lead role for SBA, and serve as the single point of contact for communications and coordination for parties affected by this MOU. OSG will:
 - i. Work with the other SBA program areas involved in the initiative to develop specialized.
 - ii. Work with SBA's Offices of Field Operations, Office of Entrepreneurial Development, and Office of Government Contracting & Business Development to coordinate planned activities with District Offices to maximize marketing and resources available at the local level.
 - iii. Work with the Surety and Fidelity Association of America (SFAA) to develop content as necessary, organize outreach to bond producers and other industry professionals to provide support as trainers and to build the networks of growing construction companies in the localities that become involved with the initiative. As necessary, SBA will execute a cosponsorship agreement or other MOU to effect this collaboration.
 - iv. Assist HUD and the other partners in this initiative in understanding issues surrounding construction company capacity and finance, and developing additional financial and technical assistance products and services as appropriate.

- b. The Office of Government Contracting and Business Development will identify resources, to the extent possible, to help develop and augment training curricula and modules specific to small construction businesses, for delivery by OED resource partners that are participating in the initiative.
- c. The Office of Entrepreneurial Development will:
 - i. Assist with outreach and communication about the initiative to SBDCs, SCORE Chapters, WBCs and VBOCs.
 - ii. Offer peer exchange opportunities for participating SBDCs, SCORE Chapters, WBCs and VBOCs to develop specialized construction business training from SBDCs, SCORE Chapters, WBCs and VBOCs that have already developed such programs.
 - iii. Work with the parties to this MOU and the Lead SBDCs, SCORE Chapters, WBCs and VBOCs to support those interested in offering specialized training and/or counseling for small construction companies.
 - iv. Assist with dissemination of standardized curricula, training modules and materials to participating SBDCs, SCORE Chapters, WBCs and VBOCs.
 - v. Assist with tracking results of the initiative through reports from local SBDCs, SCORE Chapters, WBCs and VBOCs including aggregate reporting on long-term client engagement, capital infusion and surety bonding.
 - vi. Collect feedback on the initiative from SBDCs, SCORE Chapters, WBCs and VBOCs.
- 4. Other national partners: As necessary, HUD and SBA may engage other partners to advance this initiative and support local stakeholders in producing results. The agencies may develop and execute separate Memoranda of Understanding with such partners, which will detail the roles listed for each.
- 5. Local stakeholders, SBDCs, SCORE Chapters, WBCs and VBOCs: In order to achieve the goals of this initiative, and track the outcomes of this initiative, the agencies acknowledge that local stakeholders, SBDCs, SCORE Chapters, WBCs and VBOCs must play a substantial role in each place where the initiative becomes active. All elements of the initiative will not be feasible without these roles being filled in each participating locality. The Parties acknowledge that participation in the initiative, and fulfilling the local roles as envisioned herein, will be a choice on the part of each organization, not a mandate by the Parties.
 - a. In order to participate in the initiative as it is currently envisioned, local stakeholders, including cities, housing authorities, transit agencies, and/or multifamily property owners, which in aggregate must sponsor sufficient ongoing construction business to

offer consistent growth opportunities for small construction companies in their areas of service, must agree to:

- i. Manage outreach and communications to small contractors about training and counseling opportunities.
 - ii. Organize quarterly meetings to guide contractor training and development activities, coordinate contractor referrals and communications about opportunities, and review tracking information on construction company progress and report to national partners.
- b. In order to participate, SBA's District Offices, SBDCs, SCORE Chapters, WBCs and VBOCs or other stakeholders must agree to:
- i. Coordinate training logistics and any additional support for the training programs.
 - ii. Counsel and refer individual contractors to additional services.
 - iii. We will work to establish a system to track company progress from the point of intake through securing a surety bond, including, completion of training, engagement as long-term clients, and capital infusion.

IV. EXPENSES OF EACH PARTY

Each Party to the MOU will bear its own expenses in connection with the preparation, negotiation, and execution of the MOU, and implementation of its roles and responsibilities as described above. Neither Party shall be liable to the other Party for any expenses incurred as a result of participating in this Agreement.

V. PUBLICITY

The Parties will coordinate all public statements and other disclosures with regard to the MOU. No Party to the MOU may enter into any publicity regarding the MOU unless the Parties consult in advance on the form, timing, and contents of any such publicity, announcement, or disclosure.

VI. ADDING ADDITIONAL PARTIES

To accomplish the goals of this initiative, HUD and SBA recognize that additional parties may need to be added to this MOU or that relationships with third parties may need to be developed and documented through separate agreements. These agreements may be pursuant to SBA's cosponsorship authority (15 U.S.C. 634(h)) which enables it to coordinate resources for the benefit of small businesses with non-profit and for-profit entities or other authority identified at that time.

VII. TERM, AMENDMENTS, AND TERMINATION

This Agreement is effective upon date of signature of both agencies. It will remain in effect for two years unless sooner terminated by either agency. It may be renewed for a subsequent two year term upon written agreement of both agencies. This MOU may only be amended by written mutual consent. This MOU may be terminated by either party with 90 days advance written notice to the other agency.

VIII. STATEMENT OF NON-BINDING OBLIGATION AND NO FINANCIAL COMMITMENT

This MOU is an expression of intent only. Each of the Parties will act as an independent party with respect to the performance of its duties under the MOU. The MOU does not obligate and will not result in an exchange of funds, personnel, property, services, or any kind of financial commitment. It will not result in a transfer of resources between the Parties. Any future transfer of funds or obligation to undertake certain work must be authorized by an appropriate funding agreement executed by officials from HUD and SBA. The MOU does not give any third party any benefit, legal or equitable right, remedy or claim under the MOU.

IX. INFORMATION SHARING

If confidential data is to be shared between the Parties, a new written agreement or amendment to this MOU will be executed to ensure that all relevant Privacy Act and Freedom of Information Act requirements are followed.

X. AGENCY CONTACTS

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Valerie Piper, Deputy Assistant Secretary for Economic Development
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XI. SIGNATURES OF AGENCY OFFICIALS

United States Department of Housing and Urban Development

BY: Maurice A. Jones DATE: 9/26/12

NAME: Maurice A. Jones

TITLE: Deputy Secretary

Small Business Administration:

BY: _____ DATE: _____

NAME: Marie C. Johns

TITLE: Deputy Administrator

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XI. SIGNATURES OF AGENCY OFFICIALS

United States Department of Housing and Urban Development

BY: _____ DATE: _____

NAME: Maurice A. Jones

TITLE: Deputy Secretary

Small Business Administration:

BY: Marie C. Johns DATE: 9/29/12

NAME: Marie C. Johns

TITLE: Deputy Administrator

EXHIBIT A:

**OUTLINE OF POTENTIAL LOCAL ACTIVITIES TO DEVELOP CAPACITY OF
SMALL CONSTRUCTION COMPANIES**

POTENTIAL LOCAL TRAINING STRUCTURE AND ELEMENTS

Draft for discussion

Contractor development program

Local pilot activities

1. Local stakeholder convening
 - a. Establish local lead responsible for stakeholder coordination, communications, reporting to national stakeholder group
 - b. Plan near-term trainings
 - c. Establish referral contacts for contractors that enter the system
 - d. Engage industry practitioners for sessions and mentoring (e.g. bond producers, accountants)
 - e. Establish metrics and milestones (final – independent bonding)
 - f. Establish ongoing check-ins (quarterly?) to:
 - i. Review direct training outcomes
 - ii. Review contractor progress (both MCDP-ready and in OED's MIS tracking system)
 - iii. Share information about bid opportunities and requirements
2. 1-day intake session (see outline)
 - a. Intake and registration with OED's EDMIS tracking system (keep list of unique IDs for tracking)
 - b. Discussion of local construction business pipeline with federal funding
 - c. Overview of available supports (TA, working capital, other)
 - d. Contractor readiness assessments
 - i. Weed out the tire kickers
 - ii. Ensure contractors understand available TA resources and take advantage of them
3. MCDP training
 - a. Access trainers from professional associations (SFAA secures - NSBPA, CFMA, other)
 - b. Logistics, organizing, outreach on behalf of stakeholders (local resource partners, District Offices)
 - c. Additional direct outreach by HUD grantees
4. OED's Resource Partner or others stakeholder support for individual construction businesses
 - a. National partners (HUD, SFAA, SBA): establish construction modules for inclusion into general business TA
 - b. OED: assist with adaptation by participating resource partners
 - c. OED:
 - i. Adopts/adapts construction modules for local delivery
 - ii. Tracks contractor business growth through SBDC MIS system & reports out (pulls identifiers that entered through the initial intake or related means)

INITIAL SESSION FOR HUD-FUNDED CONTRACTORS

Draft for discussion

AUDIENCE

Small and minority contractors interested in working on HUD-funded construction jobs:

- Contractors that several years of business operating history but have not yet been independently bonded
- Contractors that are small and emerging

INTAKE

- Contractors RSVP'ing for event will complete a contractor's questionnaire to assess credit, capacity, and character.
- Organizers use this tool to tailor emphasis of each set of sessions, and plan follow-up.
- Secure permission for participant entry to OED EDMIS tracking system, and create sheet matching business name/owner & unique identifiers.

POTENTIAL ELEMENTS OF AGENDA

Opportunities:

Representatives of organizations overseeing HUD-funded programs (city, housing authority, redevelopment authority, other) discuss annual volume and character of construction opportunities.

1. Funding levels (historical, current, potentially projected; public and private/leveraged)
2. Amounts and examples from different types and scales of programs (single family rehabilitation, single family construction, multifamily, commercial property)
3. Cycles and timing, to extent applicable
4. Special requirements:
 - Financial records & audited financials
 - Certified payrolls for Davis-Bacon and Section
 - Bonding for contracts in excess of \$150,000 (federal); state/local
5. Typical payment arrangements:
 - Progress payment arrangements
 - Inspection processes
 - Typical turnaround times
 - Working capital requirements
6. Contacts and information sources

Using these opportunities for business growth and development: When is a business ready to become a prime contractor? What are the milestones in a growth pathway? What resources are available? What are some of the factors in the decision to enter into a joint venture instead of bid independently?

[This may be an opportunity for keynotes by a larger construction firm or a panel of relatively recent prime contractors, or potentially practitioners identified by SBA's mentor/protégé program.]

TABLES FOR SMALL GROUP INFORMATION, DISCUSSION, INDIVIDUAL FEEDBACK

- **Financing and capital access:** Local CDFIs, other local financial institutions, SBA 7a loan and CAPLINE program rep – products, services, underwriting criteria
- **Technical Assistance:** SBDCs, SCORE Chapters, WBCs, VBOCs or other stakeholders -- services for businesses at different stages of development
- **Surety bonds:** SBA and bond producers/agents, supported by SFAA. Program, underwriting criteria, costs, advantages of independent bonding, etc.

WRAP-UP DISCUSSION

Forming joint ventures vs. independent bidding; which kinds of public programs generate the right kind of opportunities for contractors at different stages. Feedback and thoughts from participants about most helpful aspects of the session, where there are still gaps

NETWORKING OPPORTUNITIES

Throughout; potentially identify sponsors for a reception after the event.